

REMARKS

In the Office Action¹, the Examiner rejected claims 26, 27, 40, and 42 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,035,907 to Decasper et al. ("*Decasper*") in view of U.S. Patent No. 6,094,587 to Armanto et al. ("*Armanto*"); rejected claim 39 under 35 U.S.C. § 103(a) as being unpatentable over *Decasper* in view of U.S. Patent Publication No. 2002/0042777 to Yoshida et al. ("*Yoshida*"); rejected claims 1-6, 8-15, and 31-38 under 35 U.S.C. § 103(a) as being unpatentable over *Decasper* in view of *Yoshida*, in further view of *Armanto*; rejected claims 28 and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Decasper* in view of *Armanto*, in further view of *Yoshida*; and objected to claims 7 and 30 as being dependent upon a rejected base claim. By this Amendment, Applicants amend claims 1-15, 26-37, 40 and 42.

Applicants respectfully traverse the rejection of claims 26, 27, 40, and 42 under 35 U.S.C. § 103(a) as being unpatentable over *Decasper*² in view of *Armanto*. Even if combinable as suggested by the Examiner, *Decasper* and *Armanto* fail to disclose or suggest the claimed subject matter.

For example, claim 26 recites a communication terminal device comprising, among other things:

a controlling unit configured to retrieve the content
from the storing unit upon detection of incoming call data,
cause the reproducing unit to reproduce the retrieved

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

² *Decasper* issued on April 25, 2006 from an application filed on December 21, 2001, while this application was filed on November 9, 2001. *Decasper* claims priority, as a continuation-in-part, to an application filed on September 13, 2000. While the prior art status of *Decasper* is not directly contested in this response, if the Examiner continues to rely on *Decasper*, the Examiner must establish the prior art status of the relied upon portions of *Decasper* based upon its priority application.

content, and cause the communicating unit to transmit to the server device a reproducing condition of the content reproduced by the reproducing unit.

As admitted by the Examiner, *Decasper* fails to disclose a controlling feature which retrieves the content upon detection of incoming call data and causes the reproduction of the retrieved content (Office Action at p. 3). According to the Examiner, *Armanto* discloses, at col. 13, line 55 to col. 14, line 15, a controlling feature which retrieves the content from storage upon detection of incoming call data and causes the reproduction of the retrieved content.

Armanto, however, fails to disclose the claimed communication terminal device comprising a controlling unit configured to retrieve the content from a storing unit upon detection of incoming call data, cause a reproducing unit to reproduce the retrieved content, and cause a communicating unit to transmit to a server device a reproducing condition of the content reproduced by the reproducing unit.

Armanto discloses “how to produce a ringing tone in a telephone.” According to *Armanto*, a “central unit” receives in a message, “tones selected by a user” which are received and stored in a memory as a “whole melody.” When a call is coming in, “according to the specifications of mobile communication systems, a message from a base station arrives first at the mobile station.” In response, a “central unit” gives a “sound generator” a “control signal” and on the basis of this “control signal,” the “sound generator” generates the “ringing tone” (col. 13, line 55 to col. 14, line 2).

Armanto discloses that when a call comes in, a message from a base station arrives at the mobile station, according to the specifications of mobile communication systems. The message in *Armanto* is received by the mobile device and is used for generating a “ringing tone.” Thus, *Armanto* discloses receiving a message from the

base station to the mobile station and does not disclose transmitting a reproducing condition of content data.

Because the message disclosed by *Armanto* is used for generating a “ringing tone,” *Armanto* fails to disclose a communication terminal device comprising a controlling unit configured to cause a communication unit to transmit to a server a reproducing condition of the content reproduced by the unit. Neither *Decasper* nor *Armanto*, taken alone or in any reasonable combination, disclose the device as recited in independent claim 26. Therefore, the subject matter of claim 26 would not have been obvious to one of ordinary skill in the art in view of *Decasper* and *Armanto*.

Claim 27 depends from independent claim 26 and is therefore allowable for at least the same reasons set forth above. In addition, dependent claim 27 may recite unique combinations that are neither taught nor suggested by prior art.

Independent claims 40 and 42, although of different scope, recite similar features to those of claim 26. Accordingly, for at least these reasons, Applicants respectfully request that the Examiner withdraw the rejection of these claims under 35 U.S.C. § 103(a).

Applicants respectfully traverse the rejection of claim 39 under 35 U.S.C. § 103(a) as being unpatentable over *Decasper* in view of *Yoshida*. As admitted by the Examiner, *Decasper* does not disclose incrementing first amount information in a first account information when receiving content from a first terminal device; and decrementing second amount information in a second account information upon transmission of content to the terminal device (Office Action at p. 9).

The Examiner thus relies on *Yoshida*. However, Applicants respectfully submit that *Yoshida* does not qualify as a prior art reference under 35 U.S.C. § 103(a). See, M.P.E.P. 706.02(I)(3). According to 35 U.S.C. §103(c), subject matter that is prior art under §102(e) shall not preclude the patentability of an invention, if the invention and the subject matter were commonly owned or subject to an obligation of assignment to the same entity.

Both *Yoshida* and the present application are assigned to Sony Corporation. In addition, this statutory provision applies to any application filed on or after November 29, 1999, while this application was filed on November 9, 2001. As *Yoshida* is not prior art to the pending claims for the purposes of § 103(a), Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Applicants respectfully traverse the rejection of claims 1-6, 8-15, and 31-38 under 35 U.S.C. § 103(a) as being unpatentable over *Decasper* in view of *Yoshida*, in further view of *Armanto*. For example, claim 1 recites a data communication system comprising, among other things:

server device incrementing first amount information in the first account information when receiving the content from the first terminal device, the server device decrementing second amount information in the second account information when transmitting the content to the second terminal device.

As admitted by the Examiner, *Decasper* fails to disclose the claimed server device (Office Action at p. 11). The Examiner thus relies on *Yoshida*. Because *Yoshida* is not prior art to the pending claims for the purposes of § 103(a) and because *Armanto* also fails to disclose the claimed server device, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Claims 2-6 and 8-15 depend from independent claim 1 and are therefore allowable for at least the same reasons set forth above. In addition, dependent claims 2-6 and 8-15 may recite unique combinations that are neither taught nor suggested by prior art.

Independent claim 38, although of different scope, recites similar features to those of claim 1. Accordingly, for at least the reasons set forth above, Applicants respectfully request that the Examiner withdraw the rejection of this claim under 35 U.S.C. § 103(a).

Claims 31-37 depend from independent claim 26, the allowability of which was established above. At least for this reason, Applicants respectfully request that the Examiner withdraw the rejection of claims 31-37 under 35 U.S.C. § 103(a). These claims have been rejected as being obvious in view of *Yoshida*. Because *Yoshida* is not prior art to the pending claims for the purposes of 35 U.S.C. § 103(a) and because *Armanto* also fails to disclose the claimed features, Applicants respectfully submit that this rejection is improper and respectfully request that it be withdrawn.

Applicants respectfully traverse the rejection of claims 28 and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Decasper* in view of *Armanto*, in further view of *Yoshida*. Claims 28 and 29 depend from independent claim 26, the allowability of which was established above. At least for this reason, Applicants respectfully request that the Examiner withdraw the rejection of claims 28 and 29 under 35 U.S.C. § 103(a). These claims have also been rejected as being obvious in view of *Yoshida*. Because *Yoshida* is not prior art to the pending claims for the purposes of 35 U.S.C. § 103(a) and because the Examiner admits the combination of *Decasper* and *Armanto* fails to

disclose the claimed features, Applicants respectfully submit that this rejection is improper and respectfully request that it be withdrawn for this additional reason.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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